

REMARKS

The Examiner is thanked for the careful examination of the application.

Claim Amendments

Claims 1, 2, 44 and 45 have been amended to remove reference to color of the strip (part) being an indicia that provides an indication of a product type. Claims 1, 2, 44 and 45 now refer to the color of the strip (part) being an indicia that provides an indication of **size** or **absorbent capacity**. Support for this amendment may be found throughout the specification. Entry and consideration of the amendments is respectfully requested.

§ 102(e) - Cammarota

Claims 1, 2, 5-11 and 19-25 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Cammarota (USPN 6,307,119). Applicant respectfully traverses this rejection.

The Office asserts that Cammarota anticipates the presently claimed invention, as recited in independent claims 1 and 2.

Each of claims 1 and 2 relate to the aspect that the color of the strip (or "strip part" - the term strip will be used hereinafter to refer to both "strip" and to "strip part") is an indicia that provides an indication of a **size** or **absorption capacity** of the article. To be clear, it is not just that there is an indicia, but that the color is the indicia. The Office has asserted that "The presence of the colored graphics located on the strip part 30 indicated that the diaper is a wetness-indicating diaper, and therefore the color of the strip part 30 is an indicia of the product type." However, the claims have been amended to recite that the must provide an indication of a size or absorption capacity. Clearly, Cammarota does not disclose or suggest this. There is simply no disclosure or suggestion in Cammarota to provide a color that provides an indication of size or absorbent capacity.

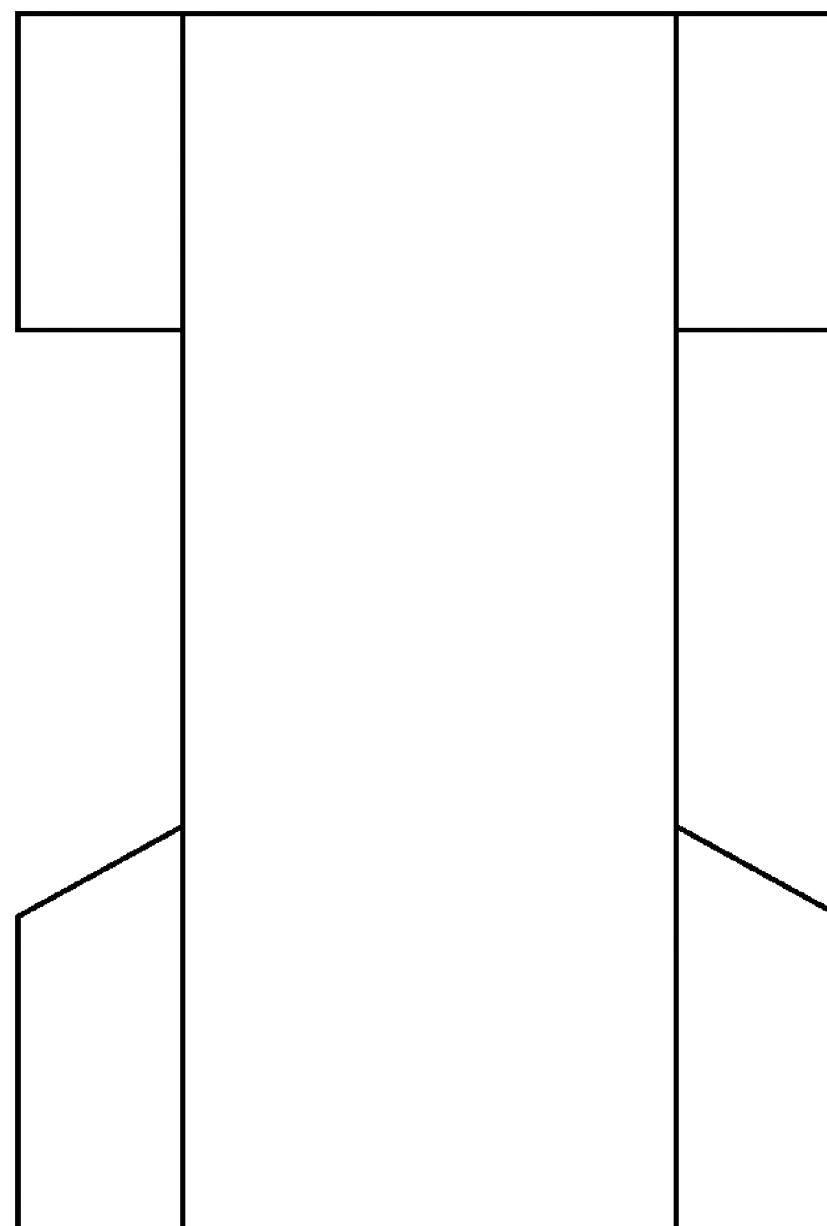
Further, applicant respectfully asserts that the graphics in Cammarota do not provide any indicia at all. The graphics of Cammarota do not indicate that the anything related to size or absorption capacity. The graphics are simply present to make the article more appealing to a child undergoing toilet training. *See, for example, column 1, line 9 to column 2, line 6.* Moreover, claims 1 and 2 recite that

the color of the strip (not simply the presence of a strip) is an indicia. The graphics of Cammarota do not have a specific color that indicates anything, let alone the size or absorption capacity of the article. Accordingly, Cammarota does not teach or suggest that the color of the strip is an indicia that provides an indication of a size or absorption capacity of the article.

Further, each of claims 1 and 2 relate to a strip and a wetness indicator. Additionally, each of claims 1 and 2 relate to the aspect that identification of the location of the wetness indicator is facilitated by the strip having a color and wherein that color is different than the color of the remaining part of the backsheet.

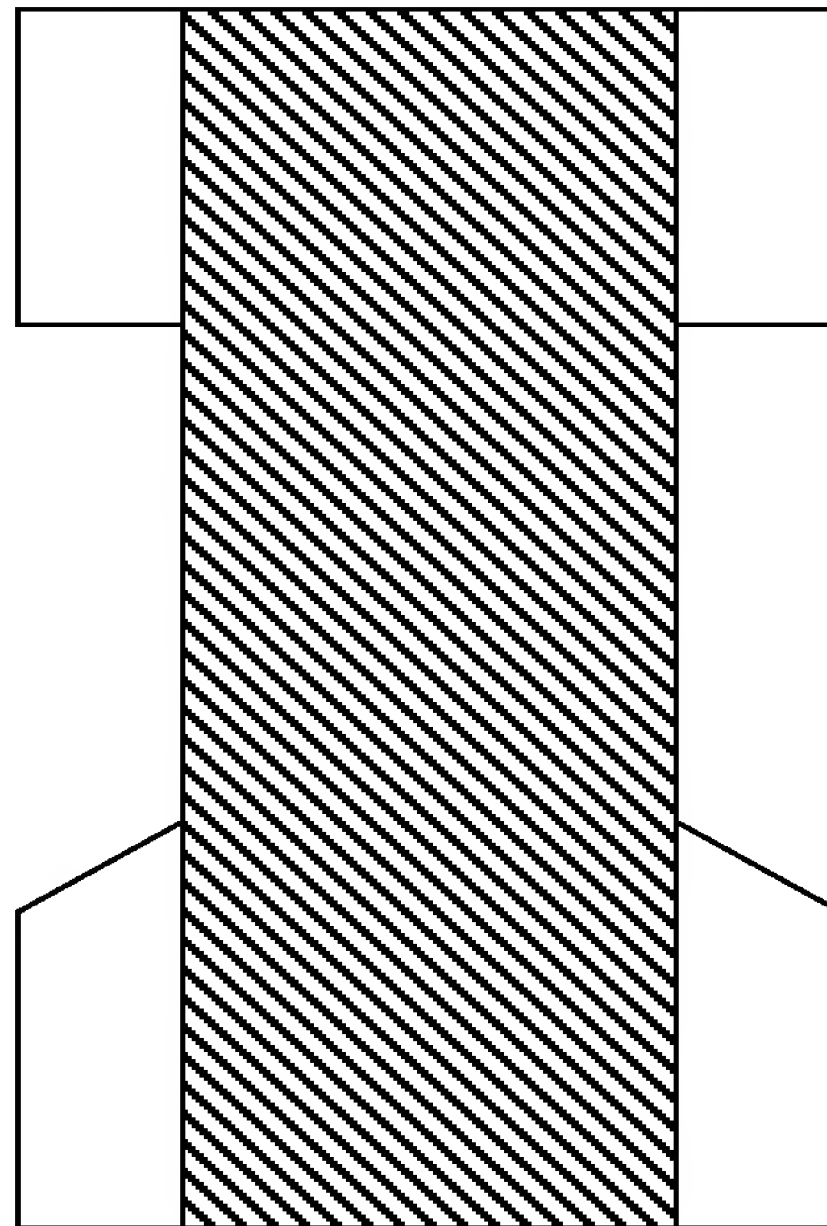
The Office has asserted that the alleged strip of Cammarota is the entire width (and length) of the absorbent body. *See discussion infra*. And, the Office asserts that such a strip will facilitate the identification of the location of the wetness indicator. Applicants respectfully disagree. The Office asserts "that the wetness indicators 66 of Cammarota, as shown in figure 1, are disposed substantially across the width of the absorbent body." *Official Action, page 1*. Respectfully, the Office is incorrectly interpreting Figure 1 of Cammarota. Wetness indicators 66 extend approximately one third (1/3) of the way across the absorbent body -- not substantially across the width of the absorbent body (the width of the alleged strip).

To be clear about the effect of the Office's assertion, the Office is requested to review the following, wherein a user of an absorbent article is presented with the following absorbent article that has a wetness indicator disposed somewhere on the following absorbent article:



Clearly, the user is not able to identify where on the absorbent article the wetness indicator is disposed.

But, the Office's assertion is that an (alleged) strip that corresponds to the following diagonal area does identify to the user where the wetness indicator is:



How does this diagonal area help pinpoint the location of the wetness indicator? A nurse (or caregiver) will have to search far and wide for the possible location of the wetness indicator, including possibly rolling a patient over and moving from side to side of a bed. the diagonal are simply provides no feedback as to the location of the wetness indicator.

The Office is requested to review the reasonableness of her assertion that the above diagonal area facilitates the identification of the location of the wetness indicator. Clearly, the above strip leaves the user guessing and provides no feedback as to the location of the wetness indicator.

The Office is reminded that a wetness indicator can be arranged at any location on an absorbent article, for example, along the side of the absorption body or on the underside thereof. Accordingly, a person, such as a nurse, can have significant difficulty locating the wetness indicator to determine if the absorbent article is wet and in need of changing. For example, if the wetness indicator is an "appearing" type, such that the indicator only becomes visible when exposed to urine, a nurse will have no idea where to look for a wetness indicator that has not yet

"appeared." Yet, the claimed combination of the present invention overcomes this problem. The presently claimed invention explicitly provides that the location of the wetness indicator is facilitated by the strip part.

As explained above, the Office relies on Cammarota to allegedly teach the presently claimed invention. The Office asserts that Cammarota has a backsheet 40 that has "a strip part 30 and a remaining part 34, as shown in figure 1." Reference number 30 actually refers to the outer surface of the training pant 20. However, applicant understands the Official Action to be referring to the shaded portion below as the claimed "strip:"

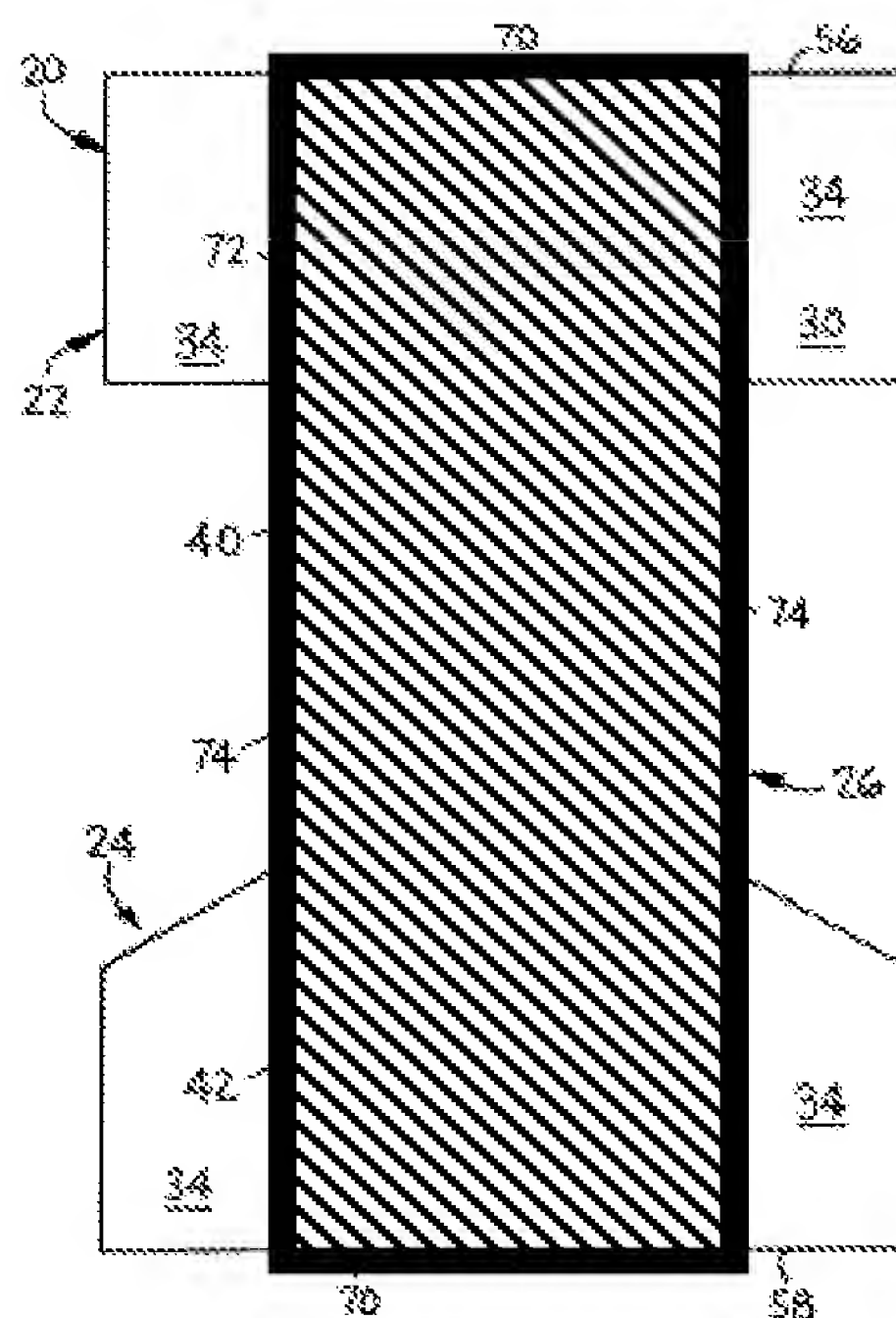


FIG. 2

Applicants respectfully assert that the asserted strip of Cammarota cannot reasonably correspond to the presently claimed strip. The claimed strip facilitates finding the location of the wetness indicator. The asserted strip of Cammarota does not facilitate finding the location of the wetness indicator. The asserted strip of Cammarota is essentially the entire absorbent product, and is the entire area of the absorbent body. It is unreasonable to suggest that one skilled in the art would think that the entire area of the absorbent body facilitates the location of a wetness indicator. That is, it is unreasonable to assert that the asserted strip of Cammarota can be used to facilitate the location of wetness indicators 66 that extend approximately one third (1/3) of the way across the absorbent body. The Office has not described

properly and reasonably how the asserted strip of Cammarota is used to facilitate the location of wetness indicators. Quite simply, the asserted strip of Cammarota does nothing to facilitate the location of the wetness indicators.

Applicants respectfully assert that the Office is taking an overly broad view of the claims. The Office is limited to interpreting the claims as broadly as their terms **reasonably** allow. *In re American Academy of Science Tech Center*, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). Moreover, the Office is reminded that the claims do not stand alone but, rather, are part of a fully integrated written instrument consisting principally of a specification that concludes with the claims and, thus, **must be read in view of the specification**, of which they are part. *Philips v. AWH Corp.*, 75 USPQ2d 1321, 1327 (Fed. Cir. 2005).

A review of the specification elucidates that a wetness indicator can be arranged at any location on an absorbent article, for example, along the side of the absorption body or on the underside thereof. Accordingly, a person, such as a nurse, can have significant difficulty locating the wetness indicator to determine if the absorption body is wet and in need of changing. For example, if the wetness indicator is an "appearing" type, such that the indicator only becomes visible when exposed to urine, a nurse will have no idea where to look for a wetness indicator that has not yet "appeared." Thus, it is clear from the specification, that for the strip part to facilitate the location of the strip, the strip part must be something much smaller or more specifically identifying than the entire area of the absorbent body. Having the strip be the entire area of the absorbent body entirely defeats the purpose of facilitating the location of a wetness indicator.

The presently claimed invention facilitates finding the location of the wetness indicator is facilitated by the strip part. It is **unreasonable** to suggest that the asserted strip of Cammarota facilitates finding the location of the wetness indicator. The asserted strip of Cammarota is essentially the entire absorbent product, and the entire area of the absorbent body. It is **unreasonable** to suggest that one skilled in the art would think that the entire area of the absorbent body facilitates the location of a wetness indicator.

Accordingly, Cammarota does not teach or suggest the presently claimed combination which includes a strip, such that the location of the wetness indicator is facilitated by the strip.

Accordingly, claims 1, 2, 5-11 and 19-25 should now be in condition for allowance.

§ 103(a) - Cammarota

Claims 44 and 45 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Cammarota (USPN 6,307,119) in view of Miller (USPN 5,839,585).

Each of claims 44 and 45 recite an assortment of products comprising a plurality of absorbent articles of **at least two different** sizes or absorption capacities of the articles wherein each absorbent article comprises, inter alia, a strip part wherein different colors of the strip are an indicia that provides an indication of the difference in the size or absorption capacity of the article.

First, there is no teaching of an indicia that provides an indication of size or absorption capacity. This is discussed *supra*. Cammarota is devoid of this disclosure or suggestion, and this deficiency is not remedied by Miller.

Second, applicants note that the claims refer to an assortment of products, but do not recite that one and the same package should contain articles of different sizes or absorption capacity.

Third, the Office is asserting that two different sizes of the Cammarota diaper can be packaged together (as allegedly taught by Miller). However, packing two different sizes of the Cammarota diaper does not result in the presently claimed invention. That is, the coloring of the alleged indication in the Cammarota diaper will be the same throughout the "assortment of products." There is no indication of the difference between the **at least two different** sizes or absorption capacities of the articles.

The Office has asserted that "the indicia of the claimed articles is considered printed matter, and where no new or unobvious functional relationship between the printed matter and the article exists, the printed matter will not distinguish the invention from the prior art in terms of patentability (see MPEP 2112.01(III))."

MPEP § 2112.01(III) recites:

Where the only difference between a prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the printed matter will not distinguish the claimed product from the prior art. In re Ngai, **367 F.3d 1336, 1339,**

70 USPQ2d 1862, 1864 (Fed. Cir. 2004)< (Claim at issue was a kit requiring instructions and a buffer agent. The Federal Circuit held that the claim was anticipated by a prior art reference that taught a kit that included instructions and a buffer agent, even though the content of the instructions differed.). See also *In re Gulack*, 703 F.2d 1381, 1385-86, 217 USPQ 401, 404 (Fed. Cir. 1983)("Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability...[T]he critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate.").

However, the indicia has a functional relationship. For example, in many nursing homes, absorbent products are often taken out from their packaging and placed on a shelf or the like. It is then important that the nursing staff easily can identify a product of a correct size, for example. Accordingly, the Office cannot ignore the claim terms. Each and every claim term must be disclosed in order for the Examiner to present a *prima facie* case of obviousness. Respectfully, the present combination fails to present such a case.

Accordingly, claims 44 and 45 are patentable over the cited art. Entry and allowance of the claims is respectfully requested.

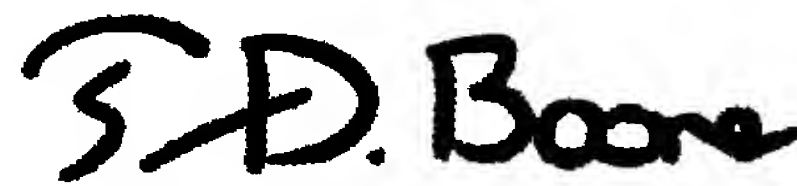
Conclusion

In the event that there are any questions concerning this Amendment, or the application in general, the Office is respectfully urged to telephone the undersigned attorney so that prosecution of the application may be expedited.

Respectfully submitted,
BUCHANAN INGERSOLL & ROONEY PC

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